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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 28, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUA990054

Ex Parte: In The Matter of  
Adopting Additions and  
Amendments to the Commission's  
Rules Governing the Filing of  
Utility Rate Increase Applications

ORDER ADOPTING RULES

By order entered September 14, 1999, the Commission established this proceeding for the consideration of amendments or additions to our Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules"),<sup>1</sup> and the Rules Governing Streamlined Rate Proceedings and General Rate Proceedings for Electric Cooperatives Subject to the State Corporation Commission's Rate Jurisdiction ("Cooperative Rules")<sup>2</sup> (collectively, "the Rules"). As noted in our Order Establishing Proceeding, much has changed within the public utility industry and in the Code of Virginia since the

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<sup>1</sup> 20 VAC 5-200-30.

<sup>2</sup> 20 VAC 5-200-21.

Rules were last comprehensively examined, and therefore a full review is now timely.

The Commission Staff filed on November 9, 1999, a report recommending certain amendments and additions to the Rules. The following parties filed comments on the proposed amendments and additions: The Potomac Edison Company, d/b/a Allegheny Power; Washington Gas Light Company, Appalachian Power Company, d/b/a American Electric Power ("AEP-VA"); the Office of the Attorney General's Division of Consumer Counsel; Old Dominion Electric Cooperative and its member distribution cooperatives,<sup>3</sup> together with the Virginia, Maryland & Delaware Association of Electric Cooperatives (collectively, "the Cooperatives"); Kentucky Utilities Company, d/b/a Old Dominion Power Company; Virginia Electric and Power Company ("Virginia Power"); Roanoke Gas Company; Columbia Gas of Virginia, Inc.; GTE South Incorporated; Atmos Energy Corporation, d/b/a United Cities Gas, Delmarva Power & Light Company, Virginia - American Water Company, and Virginia Natural Gas (collectively "the Companies"); and the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates (collectively, "the Industrial Electric Customers"). Following our Order for Additional

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<sup>3</sup> A&N Electric Cooperative, BARC Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

Notice of June 14, 2000, the Virginia Gas Users' Association also filed comments.

AEP-VA, Virginia Power, the Cooperatives, and the Companies requested a hearing on the proposed Rule changes. Accordingly, by order of March 1, 2000, we scheduled a public hearing for June 6, 2000, and directed the Staff and parties to file either testimony or statements adopting their comments on May 1, 2000, and May 22, 2000, respectively.

The hearing on the Rules was held over 2 days on June 6 and 7, 2000. The Commission requested that the legal issues surrounding a streamlined revenue neutral rate restructuring proceeding advocated by some of the utilities be briefed by the affected parties and the Staff. The Cooperatives and Staff also filed briefs on certain other issues relevant to the Cooperatives. All briefs were filed June 30.

NOW THE COMMISSION, upon consideration of the evidentiary record, legal arguments, and applicable law, is of the opinion and finds that the Rules as amended and attached hereto should be adopted, effective today. Our amendments to the Rules have been made after our consideration of proposals from the Staff and parties. We will not comment on all changes to the original proposal made by Staff. We will, however, address certain provisions of the amended Rules.

We are not imposing in Rule A.7 of the Rate Case Rules a requirement on the Staff to complete its initial review of an application within a specified time of the application's filing. Although no party presented evidence of any past dilatory practices of the Staff in completing its initial review of rate applications, we are nevertheless proposing such a rule in the proceeding to consider revisions to the Commission's Rules of Practice and Procedure.<sup>4</sup> Pending formal adoption of the new Rules of Practice and Procedure, we will expect the Staff to report formally to an applicant the status of an application, including any necessary remedial action necessary to make the application complete, within 10 working days of an application's filing.

We are adopting Rules 20 VAC 5-200-30 A.10 and 20 VAC 5-200-21 G to recognize expressly the right of the Staff and any party to present issues not raised by the applicant in its rate case or Annual Informational Filing ("AIF"). This is an existing practice of the Commission that we now formalize by rule.

With respect to earnings tests, new issues will inevitably arise that were not considered or ruled upon in a company's last

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<sup>4</sup> Commonwealth ex rel.: State Corporation Commission Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case. No. CLK000311, Order for Notice and Comment or Requests for Hearing (July, 18, 2000).

rate proceeding. For example, a circumstance not previously considered may occur or there may be issues relevant to an applicant arising from rulings made affecting similarly situated companies in other proceedings. These matters must, of course, be addressed and Staff and others should have an opportunity to address them. At the same time, absent unusual circumstances, matters decided in a company's last rate case should not be relitigated. Accordingly, the same rule will apply for earnings tests as for rate applications and AIF's, except that in earnings test filings made pursuant to the Rate Case Rules for investor-owned utilities, issues specifically decided by the Commission in an applicant's most recent rate case may not be raised by Staff or parties unless good cause can be shown.

Schedules in the Rate Case Rules required for AIFs will be expanded partially to include Schedules 9 through 14, and 25.<sup>5</sup> Schedules 9 through 14 are for earnings tests and are not required in all instances. With respect to Schedules 9 and 10, we modify the instructions to make clear that the filing requirements do not apply to a utilities' non-jurisdictional regulatory assets. Exemptions for specific classes of regulatory assets may be sought through a requested waiver. If

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<sup>5</sup> Schedule numbers referenced in this Order coincide with those in the Staff's May 1, 2000, pre-filed testimony. (Ex. KBP-2, Appendices A-D.)

granted, such exemptions would remain in force until the Commission orders otherwise.

We will not accept the Staff's proposal to extend to AIFs the rate application filing requirements found in Schedules 23 (Advertising Expense), 24 (Miscellaneous Expense), 26 (Income Taxes), and 27 (Organization).<sup>6</sup>

We will revise the listed categories of advertising expenses on Schedule 23 to track the language of § 56-235.2, and include an "other" category. Regarding Schedule 25, the narrative description required for "each affiliated service received or provided" presented questions as to the extent of information to be filed. We have revised the instructions to make clear that utilities are expected to file a description of the types of services received or provided, but are not required to provide the description each time the particular service is rendered. The term "accounting" modifying "services" is removed from the instructions because the types of services at issue are not limited to accounting services. Also, where relevant, utilities may comply with the filing requirements of this schedule with appropriate references to Affiliates Act filings.

We will not adopt Virginia Power's proposal for a blanket exemption for electric utilities from filing pro forma

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<sup>6</sup> Our decision declining to adopt these filing requirements within the Rules should not be interpreted that it would be inappropriate for the Staff to seek this information through discovery.

information with AIFs while rates are capped under the Virginia Electric Utility Restructuring Act. Utilities are free, however, to request a waiver from this requirement, and any such requests will be considered on a case-by-case basis.

The Staff originally proposed as part of the Rules an earnings test for electric utilities' generation operations. The Staff withdrew this proposal in response to some utilities' comments on the Staff's November 9 report. At the hearing, the Consumer Counsel and the Industrial Electric Customers urged the Commission to reinstate this requirement in the Rules. We will not incorporate a generation earnings test in the Rules; however, investor-owned electric utilities shall maintain the information necessary to conduct an earnings test on a bundled basis through July 1, 2007, the end of the electric restructuring capped rate period, and such information shall be retained by the company until further notice by the Commission. These utilities shall also include in their Annual Informational Filings a statement that such information is being maintained in compliance with this requirement.

Several parties, primarily gas utilities, advocated a new type of expedited proceeding wherein "revenue neutral" tariff and rate design changes could be made without demonstrating in the proceeding that rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual

costs incurred by the utility as would otherwise be required by § 56-235.2.A. Because we were concerned with possible statutory impediments to the proposal, we directed the parties and Staff to file legal memoranda on this issue.

We find that § 56-235.2 requires that when any rate, toll, charge, or schedule is to be increased in a proceeding, the public utility must demonstrate at that time that its rates, tolls, charges, or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the utility in serving its jurisdictional customers.

It has been argued that once aggregate revenues and resulting rates are established by the Commission, they satisfy the requirements of § 56-235.2 and are presumed to be just and reasonable until shown otherwise. It is true that rates established by the Commission are deemed just and reasonable until determined otherwise. However, when a utility proposes to increase any rate, it has the burden of making the showing required by § 56-235.2 relative to aggregate revenues and costs. This burden may not be met by relying on an earlier Commission determination in a prior case.

We recognize, that upon a complaint of a utility customer, the Commission may reduce a single rate schedule without conducting an analysis of the utility's aggregate revenues and

costs. See Petition of Luck Stone Corp.<sup>7</sup> Similarly, § 56-40 permits a utility to revise its schedules without notice when the revision effects "no increases." (Emphasis supplied.) With a customer complaint, the customer bears the burden to make a prima facie showing that the rate is not just and reasonable and the Commission may substitute a different rate pursuant to § 56-235. On application of a utility for rate changes that includes an increase, the burden of proof to show that the proposed changes are just and reasonable is upon the utility pursuant to §§ 56-235.2 and 56-235.3, and we are required to consider aggregate revenues and costs pursuant to 56-235.2

We will amend the current Rules for expedited rate filings to permit a utility to propose revisions to terms and conditions, changes in revenue allocations among classes, and rate design changes, provided the requested changes are supported by appropriate cost studies. We have also amended the Rules to make clear that utilities need not request an increase in regulated operating revenues in an expedited rate case.<sup>8</sup> Proposed rate changes will of course be interim and subject to refund while an application is pending, and the utility will be at risk both for any proposed rate increases that are not

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<sup>7</sup> To investigate Northern Virginia Electric Cooperative's rates and charges, Case No. PUE880065, 1990 SCC Ann. Rep. 265, Final Order, Feb. 6, 1990.

<sup>8</sup> Indeed, a company can also file a general rate application that does not propose an increase in regulated operating revenues.

approved as well as for any interim rate reductions that are ultimately established at the former, higher level.

The Staff has proposed that electric cooperatives file projected financial statements based on Rural Utilities Service ("RUS") Form 325A.<sup>9</sup> We find that this is a reasonable filing requirement in view of the statutory requirement of § 56-582.A that a rate application and Commission approval give due consideration to the justness and reasonableness of rates on a forward-looking basis. The cooperatives are free to file any additional projections or propose any adjustments in these Schedules that they find may be more appropriate for supporting a forward-looking rate increase accompanied by an explanation of the variance from the Form 325A data. The projected financial statements required in Schedules 15, 16, and 17, as well as 18 and 19, of the Cooperative Rules shall be reflected on a year-by-year basis to assist the Staff, parties, and the Commission in their analysis of the applicant's proposed rates.

Finally, we are revising Schedule 20 of the Cooperative Rules to omit the categories "energy" and "consumer," to be replaced with "other." The purpose of this category is to include costs associated with services that are not part of the cooperatives' regulated business.

Accordingly, IT IS ORDERED:

(1) The Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings and the Rules Governing Streamlined Rate Proceedings and General Rate Proceedings for Electric Cooperatives Subject to the State Corporation Commission's Rate Jurisdiction are adopted as modified, as shown in Appendices A and B to this order.

(2) These Rules as now modified shall be effective as of the date of this order.

(3) All investor-owned electric utilities subject to the Virginia Electric Utility Restructuring Act shall maintain the information necessary to conduct an earnings test on a bundled basis through July 1, 2007, to be retained the company until further notice by the Commission, and shall include in its Annual Informational Filing a statement that such information is being maintained in compliance with this requirement.

(4) Pending formal adoption of revised Rules of Practice and Procedure, the Staff shall report formally to an applicant the status of any application filed pursuant to the Rules adopted herein, including any necessary remedial action necessary to make the application complete, within 10 working days of an application's filing.

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<sup>9</sup> Proposed Schedules 15, 16 and 17. (Ex. KBP-2, Appendix D.)

(5) There being nothing further to come before the Commission, this matter shall be dismissed and the papers filed herein shall be placed in the file for ended causes.